IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6397 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL MAGANBHAI SHIVRAMDAS

Versus

REGISTRAR OF MONEY LENDERS

Appearance:

MR VS SHAH for Petitioner

NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 05/05/2000

ORAL JUDGEMENT

The petitioner is a resident of village Dedarda, Taluka : Chanasma, District : Mehsana. Section 13-A of the Bombay Money Lenders Act, 1946 ("the Act" for short) empowers the Registrar, Assistant Registrar or any other officer authorised by the State Government to require any

money lender or any person in respect of whom the Registrar, Assistant Registrar or officer so authorised has reason to believe that he is carrying on the business of money lending, to produce any record or document in his possession which, in his opinion, is relevant for the purpose of verifying whether the business of money lending is carried on in accordance with the provisions of the Act. The said provision further empowers the competent officer to enter the premises where he believes such record or document to be, ofcourse after a reasonable notice, and at reasonable time. In exercise of the powers conferred by section 13-A of the Act, the Additional Co.operative Officer (Money Lending) visited the residential premises of the petitioner on November 17, 1987 and found that breach of provisions of Sections 5, 18, 19 and 25(3) of the Act was committed by the petitioner. It may be mentioned that section 5 provides that no money lender shall carry on business of money lending, except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence; whereas section 18 imposes duty on the money lender to keep accounts and furnish copies to the debtor and section 19 provides for delivery of statement of accounts and copies thereof by money lender to debtors indicating information mentioned in the said section; whereas section 25(3) of the Act stipulates that if any money lender or a person advancing a loan specified in sub-clause(g) of clause (9) of section 2 makes an oral or written demand or charges or receives from a debtor interest at rate exceeding the maximum rate fixed by the State Government under sub-section (1), he shall, for the purposes of section 34, be deemed to have contravened the provisions of the Act. After visit of residential premises of the petitioner, a summons dated April 18, 1988 was issued to the petitioner calling upon him to make payment of Rs.2,480/- by way of composition of the offence as contemplated by section 35-C of the Act. Pursuant to the summons, the petitioner remained present before the District Registrar, Money Lending, Ahmedabad on April 28, 1988 and declared before him that as he had not committed any offence under section 34 of the Act, he was not inclined to compound the offence by payment of Rs.2,480 as suggested in the summons. The declaration made by the petitioner on April 28, 1988 before the District Registrar, Money Lending, Ahmedabad is produced by him at Annexure-A to the petition. Inspite of disinclination on the part of the petitioner to make payment of any sum by way of composition of offence, the Director, Money Lending, Ahmedabad Division, Ahmedabad passed an order on May 23, 1988 directing to recover a sum of Rs.2,480/- from the petitioner as

arrears of land revenue. That order is produced at Annexure-B to the petition. As the petitioner did not make payment of Rs. 2,480/-, the Mamlatdar, Chanasma issued a notice dated August 9, 1988 calling upon the petitioner to deposit a sum of Rs. 2,480/- with him and the petitioner was informed that on default being committed, appropriate steps would be taken for auction of the property of the petitioner. The notice issued by the Mamlatdar, Chanasma is produced at Annexure-C to the petition. According to the petitioner, payment of any sum by way of composition of offence is not compulsory and, therefore, the respondents are not entitled to recover a sum of Rs.2,480/- from the petitioner or initiate any coercive action for recovering the said amount. The petitioner has pleaded that if a person charged with commission of offence is not inclined to pay any sum by way of composition of offence, the remedy available to the authorities is to institute proceeding for offence punishable under section 34 of the Act for contravening the provisions of section 18 and/or section 19 of the Act, but a person cannot be compelled to compound the offence against his wish. Under the circumstances, the petitioner has filed present petition under Article 226 of the Constitution and prayed to issue a writ of mandamus or any other appropriate writ or order to quash and set aside order dated May 23, 1988 passed by the Director, Money Lending, Ahmedabad Division, Ahmedabad directing to recover a sum of Rs. 2,480/- from the petitioner by way of arrears of land revenue.

2. The petition was placed for admission hearing before Court on September 20, 1988 on which date rule was issued and ad-interim relief restraining the respondents from recovering a sum of Rs. 2,480/- from the petitioner during the pendency and final disposal of the petition was granted.

3. Though the respondents are duly served, no affidavit-in reply has been filed by any of the respondents controverting the averments made in the petition. This matter is notified for final hearing on 10 different occasions, but learned Counsel for the petitioner has not remained present. Having regard to the facts of the case, I had requested Ms. Manisha Lavkumar Shah, learned A.G.P. to appear on behalf of the respondents and to assist the Court. Accordingly, the learned A.G.P. has appeared on behalf of the respondents and supported the action of the respondents.

4. Section 35-C of the Act deals with compounding of certain offences and reads as under :-

"35C : Compounding of certain offences : (1) The Registrar may, either before or after the institution of proceedings for any offence punishable under section 34 for contravening the provisions of section 18 or section 19, accept from any person charged with such offence by way of composition of the offence a sum not exceeding fifty rupees.

(2) On payment of such sum may be determined by the Registrar under sub-section(1), no further proceedings shall be taken against the accused person in respect of the same offence."

A bare reading of the above quoted provision makes it evident that the Registrar may either before or after institution of proceedings for any offence punishable under section 34 for contravening the provisions of section 18 or section 19, accept from any person charged with such offence by way of composition of the offence a sum not exceeding fifty rupees and on payment of such sum, no further proceedings can be taken against the accused person in respect of the same offence. As noted earlier, the petitioner was served with a summons dated April 18, 1988 and asked to pay a sum of Rs. 2,480/- by way of composition of the offence, but the petitioner had remained present before the Registrar on April 28, 1988 and declared in unequivocal terms that he was not inclined to make payment of Rs. 2,480/- by way of composition of offence, as according to him, he had not committed any offence punishable under the Act. The object of section 32-C of the Act is to enable any person charged or likely to be charged with an offence punishable under section 34 of the Act to compound the offence by payment of the sum mentioned therein. It enables such persons to compound the offence and save himself from the trouble of prosecution and trial. However, this provision does not enable the authority concerned to compel a person charged or likely to be charged with an offence punishable under the Act to compound the offence. Section 35-C of the Act does not compel a person charged with an offence punishable under the Act to make payment of any sum by way of composition of the ofence against his wish. In view of the disinclination expressed by the petitioner to pay any sum by way of composition of the offence, the Director, Money Lending, Ahmedabad Division, Ahmedabad could not have passed an order to recover a sum of Rs. 2,480/- from the petitioner as arrears of land revenue. As the petitioner was not willing to make payment of any sum by way of composition of the offence, the only course open to the

competent authority was to institute proceedings for an offence punishable under section 34 of the Act, but no steps could have been initiated to recover Rs. 2,480/as arrears of land revenue. Under the circumstances, the petition will have to be accepted.

For the foregoing reasons, the petition succeeds. The order dated May 23, 1988 (which is produced at Annexure-B to the petition) passed by the Director, Money Lending, Ahmedabad Division, Ahmedabad directing to recover a sum of Rs. 2,480/- from the petitioner as arrears of land revenue is hereby quashed and set aside. Consequently, notice dated August 9, 1988 issued by the Mamlatdar, Chanasma to the petitioner calling upon him to make payment of Rs. 2,480/- is also set aside and quashed. It is made clear that it will be open to the authorities to insitute an appropriate proceedings against the petitioner in accordance with the provisions of the Bombay Money Lenders Act, 1946. Rule is made absolute, with no order as to costs.

(J.M.Panchal,J.)

(patel)